



Civil Resolution Tribunal

Date Issued: April 30, 2024

File: SC-2023-002998

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zeng v. VW. Cloud Corporation*, 2024 BCCRT 408

B E T W E E N :

JIAN ZENG

APPLICANT

A N D :

VW. CLOUD CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a roofing contract. Jian Zeng entered into a roofing contract with VW. Cloud Corporation (VW Cloud) and paid a \$4,250 deposit. Mr. Zeng says VW Cloud terminated the contract without notice before any work had been done, but only refunded him \$2,000. Mr. Zeng says the contract did not meet the requirements of the *Business Practices and Consumer Protection Act* (BPCPA) and says he is entitled

to a full refund of his paid deposit on that basis. Mr. Zeng claims reimbursement of \$2,250 for the outstanding amount of his paid deposit.

2. VW Cloud says Mr. Zeng's wife, MZ, cancelled the parties' contract on Mr. Zeng's behalf. VW Cloud says it refunded \$2,000 of the paid deposit to Mr. Zeng and owes nothing further.
3. Mr. Zeng is self-represented. VW Cloud is represented by its owner.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties in this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

6. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Preliminary matter

8. VW Cloud submitted the parties' "WeChat" messages, as well as messages between VW Cloud and Mr. Zeng's wife. The are written in mostly Chinese characters with occasional English words. The CRT rules require parties to submit evidence in English. However, VW Cloud provided its own WeChat message translations. Mr. Zeng did not dispute the translations VW Cloud provided, so I have accepted them as accurate. I find they are reasonably reliable and relevant to this dispute. The parties' contract also contains Chinese characters and English words beside that I infer is a translation. I have only relied on the English or translated to English portions of these documents.

ISSUE

9. The issue in this dispute is whether Mr. Zeng is entitled to a refund of \$2,250 for the remainder of his paid deposit.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Zeng must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. Mr. Zeng undisputedly hired VW Cloud to install roofing on his home. Mr. Zeng provided an undated contract with VW Cloud. He says he signed the contract on June

- 1, 2022. VW Cloud did not dispute this, and it is consistent with the parties' text messages in evidence. The text messages also indicate that VW Cloud provided Mr. Zeng with the contract around June 1, 2022. The contract charged Mr. Zeng \$8,500 to install new roofing. The contract required a 50% deposit, with the remaining 50% due when the work was finished. Mr. Zeng undisputedly paid VW Cloud a \$4,250 deposit.
12. Mr. Zeng says VW Cloud stopped the contract on June 21, 2022 without any notice and only refunded him \$2,000. As noted, it is undisputed that VW Cloud refunded Mr. Zeng \$2,000 for part of his paid deposit. Bank records show VW Cloud did so on June 21, 2022.
 13. As noted, Mr. Zeng argues that he is entitled to a full refund of his paid deposit because the parties' contract did not meet the requirements in BPCPA sections 19 and 23, which I will discuss below. VW Cloud did not specifically dispute this. However, it says Mr. Zeng agreed to the contract as written without any concerns about its contents. VC Cloud says Mr. Zeng's wife cancelled the contract on his behalf, and it is entitled to keep the remainder of the deposit because its contractors already spent time organizing the roofing work.
 14. I turn then to the BPCPA requirements. I find that Mr. Zeng meets the definition of consumer in the BPCPA, and VW Cloud meets the definition of supplier in the BPCPA. I also find that the parties' contract is a future performance contract as defined in the BPCPA.
 15. BPCPA section 19 requires a future performance contract to include a detailed description and itemized purchase price of the goods or services to be supplied, as well as a detailed statement of the payment terms. The parties' contract does include a description, price, and payment terms, but does not include VW Cloud's address as required.
 16. BPCPA section 23(2) also requires a future performance contract to include the supply date, and the date on which the supply of goods will be complete. The contract

does not list a supply date or the date on which the supply of goods and services will be complete. So, I find the contract does not comply with BPCPA sections 19 and 23(2).

17. BPCPA Section 23(5) allows a consumer to cancel a future performance contract within 1 year of the date they receive the contract if it does not include the information required in sections 19 and 23(2). Therefore, I find that Mr. Zeng was entitled to cancel the contract.
18. As noted, it is undisputed that Mr. Zeng received the contract around June 1, 2022. The question then is whether Mr. Zeng cancelled the contract. BPCPA section 54 requires a consumer who wishes to cancel a future performance contract to give notice by any method that creates evidence of their intention to cancel the contract on a specific date.
19. VW Cloud says Mr. Zeng's wife, MZ, cancelled the contract on Mr. Zeng's behalf. It provided text messages showing that on June 5, 2022, MZ told VW Cloud that she did not want to do the roof anymore. On July 4, 2022, MZ texted VW Cloud and asked VW Cloud to write a receipt that indicated the contract was cancelled.
20. Mr. Zeng's argument is that he is entitled to a refund based on VW Cloud's failure to comply with BPCPA section 19 and 23. However, VW Cloud is only responsible to provide a refund if Mr. Zeng cancels the contract as required by the BPCPA. Inconsistently, Mr. Zeng argues that he did not cancel the contract, nor authorize anyone else to cancel the contract on his behalf. However, the text messages show that MZ cancelled the contract on June 5, 2022.
21. As noted, Mr. Zeng denies authorizing anyone, including MZ, to cancel the contract on his behalf. I do not accept this. I find the text message evidence shows MZ was authorized to act as Mr. Zeng's agent. MZ initially corresponded with VW Cloud and directed VW Cloud to issue the contract in Mr. Zeng's name on May 31, 2022. The following day, Mr. Zeng corresponded directly with VW Cloud to sign the contract and transfer the deposit. MZ then resumed communicating with VW Cloud about the roof

on June 4, 2022, and then cancelled the contract on June 5, 2022 and provided further direction to VW Cloud in late June and early July 2022. Mr. Zeng admits that MZ co-owns the house where the roofing work was to occur. Given the above, on balance, I find MZ was acting as Mr. Zeng's agent and had authority to cancel Mr. Zeng's contract with VW Cloud on Mr. Zeng's behalf. So, I find Mr. Zeng cancelled within 1 year of the date he received the contract and has therefore met the cancellation requirements in BPCPA section 54.

22. BPCPA section 27 says that if a consumer cancels a contract, the supplier must refund the consumer within 15 days after the notice of cancellation has been given without deduction. BPCPA section 28 requires a consumer who has cancelled a future performance contract to deliver any goods received under the contract to the supplier's business address, which relieves the consumer of their obligations under the contract. The evidence shows VW Cloud's contractor attended Mr. Zeng's home to quote for the roofing replacement and order materials. However, there is no evidence the roof replacement had started or that Mr. Zeng received any goods from VW Cloud. So, there is nothing for Mr. Zeng to return.
23. I note that the contract required a 50% deposit. I also acknowledge VW Cloud's submissions and email evidence from its contractor that it spent time visiting Mr. Zeng's home, scheduling the project, "booking" materials, and reserving delivery dates. However, the evidence does not show Mr. Zeng received any goods, and the BPCPA provisions are mandatory. So, I find Mr. Zeng is entitled to a refund of \$2250 for the remainder of his paid deposit.
24. I also note that in submissions, VW Cloud asked that the \$2000 it undisputedly already refunded to Mr. Zeng be returned to VW Cloud. However, VW Cloud did not file a counterclaim and given my findings above, I would not have ordered Mr. Zeng to return the \$2,000 already refunded in any event.

Interest, CRT fees and expenses

25. The *Court Order Interest Act* applies to the CRT. Mr. Zeng is reasonably entitled to pre-judgment interest on the \$2,250 from June 5, 2022, the date the contract was cancelled, to the date of this decision. This equals \$164.59.
26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Zeng was successful, he is entitled to reimbursement of \$125 in paid CRT fees and \$30.45 in dispute-related expenses for a corporate record search.

ORDERS

27. Within 30 days of the date of this order, I order VW Cloud to pay Mr. Zeng a total of \$2,570.04, broken down as follows:
- a. \$2,250 as a refund of the remaining deposit,
 - b. \$164.59 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$155.45, for \$125 in CRT fees and \$30.45 for dispute-related expenses.
28. Mr. Zeng is entitled to post-judgment interest, as applicable.
29. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Leah Volkers, Tribunal Member